

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 66 - HB 99

February 20, 2013

SUMMARY OF BILL: Enhances assault under Tenn. Code Ann. § 39-13-101(a)(1) and (2) from a Class A misdemeanor to a Class E felony, if the victim is a law enforcement officer, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter. Removes the increased maximum fine for assaulting a law enforcement officer under Tenn. Code Ann. § 39-13-101(b)(2).

Enhances aggravated assault, Tenn. Code Ann. § 39-13-102, from a Class C or Class D felony to a Class B or Class C felony, if the victim is a law enforcement officer, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter. Removes the increased maximum fine for aggravatingly assaulting a law enforcement officer under Tenn. Code Ann. § 39-13-102(e)(1).

Requires a minimum sentence of 20 years for second degree murder, Tenn. Code Ann. § 39-13-210, if the victim is a law enforcement officer, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter.

ESTIMATED FISCAL IMPACT:

Increase State Expenditures - \$1,728,300/Incarceration*

Assumptions:

Assumptions Relative to Simple Assault:

- According to the TBI's Crime in Tennessee reports (http://www.tbi.state.tn.us/tn_crime_stats/stats_analys.shtml), Tennessee law enforcement has cleared an average of 48,860 simple assaults per year from 2009-2011.
- According to statistics from the Administrative Office of the Courts, there has been an average of 683 convictions for simple assault per year from 2009-2011. This resulted in approximately one percent (683 / 48,860) of cleared aggravated assaults ending in admission to a state correctional facility.
- According to the TBI's 2011 Law Enforcement Officers Killed or Assaulted reports (http://www.tbi.state.tn.us/tn_crime_stats/stats_analys.shtml), there has been an average of 1,231 simple assaults committed against law enforcement officers over the past three years.

- Assuming the same ratio of simple assaults that currently result in an admission to a state correctional facility - one percent - is realized for simple assaults against law enforcement officers, the bill will result in 12 admissions ($1,231 \times 0.01 = 12$) that receive an enhanced sentence one classification higher.
- Due to a lack of data on the number of assaults against an emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter, it is difficult to determine an exact number of admissions that will receive an enhanced sentence under the provisions of the bill. Based on an estimate by DOC, it is reasonably assumed that there will be at least one admission per year for an assault against an emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will account for 2 additional admissions ($13 \text{ admissions} \times .1178$) for a total of 15 ($13 + 2$).
- Simple assault under Tenn. Code Ann. § 39-13-101(a)(1) and (2) is a Class A misdemeanor. This bill would enhance those offenses to Class E felonies, if the subject of the assault is a law enforcement officer, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter. The average time served for a Class E felony is 1.21 years.
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same offense level as under current law ($15 \text{ offenders} \times 0.3375 = 5 \text{ offenders}$).
- According to the Department of Correction (DOC), the average operating cost per offender per day for calendar year 2013 is \$64.17.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 10 offenders [$15 \text{ offenders} - 5 \text{ offenders (recidivism discount)}$] serving 1.21 years. The cost for one offender at 1.21 years (441.95 days) is \$28,360 ($\$64.17 \times 441.95 \text{ days}$). The cost for 10 offenders is \$283,600 ($\$28,360 \times 10$).

Assumptions Relative to Aggravated Assault

- According to the TBI's Crime in Tennessee reports, Tennessee law enforcement has cleared an average of 16,459 aggravated assaults a year from 2009-2011.
- According to statistics from the Department of Correction (DOC), there was an average of 1,007 admissions for aggravated assault per year from 2009-2011. This resulted in approximately 6.12 percent ($1,007 / 16,459$) of cleared aggravated assaults ending in admission to a state correctional facility.
- According to the TBI's 2011 Law Enforcement Officers Killed or Assaulted report, there has been an average of 608 aggravated assaults committed against law enforcement officers over the past three years.
- Assuming the same ratio of aggravated assaults that currently result in an admission to a state correctional facility—6.12 percent—is realized for aggravated assaults against law enforcement officers, the bill will result in 37 admissions ($608 \times .0612 = 37$) that receive an enhanced sentence one classification higher.

- Due to a lack of data on the number of aggravated assaults against an emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter, it is difficult to determine an exact number of admissions that will receive an enhanced sentence under the provisions of the bill. Based on an estimate by DOC, it is reasonably assumed that there will be at least one admission per year for an aggravated assault against an emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter.
- Population growth will account for 4 additional admissions ($38 \times .1178$) for a total of 42 ($38 + 4$).
- It is assumed that 86 percent of the 42 admissions ($42 \times 0.86 = 36$) will be intentional aggravated assaults, a Class C felony, and enhanced to a Class B felony. It is assumed 14 percent of the 42 admissions ($42 \times 0.14 = 6$) will be reckless aggravated assaults, a Class D felony, and enhanced to a Class C felony.
- The bill will result in each of the estimated 36 offenders for intentional aggravated assault serving an additional 2.31 years (5.29 years, the average time served for a Class B felony – 2.98 years, the average time served for a Class C felony).
- According to the DOC, 43.36 percent of offenders will re-offend within one year of their release. A recidivism discount of 43.36 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same offense level as under current law ($36 \text{ offenders} \times 0.4336 = 16 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 20 offenders [$36 \text{ offenders} - 16 \text{ offenders (recidivism discount)}$] serving an additional 2.31 years. The cost for one offender at 2.31 years (843.73 days) is \$54,142 ($\$64.17 \times 843.73 \text{ days}$). The cost for 20 offenders is \$1,082,840 ($\$54,142 \times 20$).
- The bill will result in each of the estimated six offenders for reckless aggravated assault serving an additional 1.18 years (2.98 years, the average time served for a Class C felony – 1.80 years, the average time served for a Class D felony).
- According to the DOC, 33.75 percent of offenders will re-offend within one year of their release. A recidivism discount of 33.75 percent has been applied to this estimate to account for the impact of offenders who would re-offend under current law within the additional time added by this bill. It is assumed that the re-offender would have committed the subsequent offense at the same offense level as under current law ($6 \text{ offenders} \times 0.3375 = 2 \text{ offenders}$).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on 4 offenders [$6 \text{ offenders} - 2 \text{ offenders (recidivism discount)}$] serving an additional 1.18 years. The cost for one offender at 1.18 years (431 days) is \$27,657 ($\$64.17 \times 431 \text{ days}$). The cost for 4 offenders is \$110,628 ($\$27,657 \times 4$).

Assumptions Relative to Second Degree Murder

- According to the TBI's 2011 Law Enforcement Officers Killed or Assaulted report, there has been an average of one murder committed against law enforcement officers over the past three years.

- Second degree murder is the knowing killing of another; or the killing of another that results from the unlawful distribution of any Schedule I or Schedule II drug, when the drug is the proximate cause of the death of the user. Tenn. Code Ann. § 39-13-210.
- A person can act knowingly regardless of whether or not the person desired the conduct or result to occur if the person is aware of the nature of the conduct or where the conduct is reasonably certain to cause the result. *State v. Gray*, 960 S.W.2d 598 (Tenn. Crim. App. 1997).
- It is assumed that the one law enforcement officer killed each year is the subject of second degree murder.
- According to the U.S. Census Bureau, population growth in Tennessee has been 1.12 percent per year for the past 10 years, yielding a projected compound population growth of 11.78 percent over the next 10 years. Population growth will not affect the fiscal impact of this legislation.
- A recidivism discount of 49.11 percent applies, but due to the low number of estimated admissions added by this bill, the recidivism discount does not impact the incarceration cost under the proposed bill.
- Second degree murder is a Class A felony. It is assumed that the bill will result in one admission for second degree murder each year serving at least 20 years.
- According to statistics from the DOC, the average time served for second degree murder over the last 10 years has been 11.96 years. The bill will result in each offender who kills a law enforcement officer through second degree murder serving an additional 8.04 years (20 years, minimum sentence under the bill – 11.96 years, the average time served for second degree murder).
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 8.04 years. The cost for one offender at 8.04 years (2,936.61 days) is \$188,442 (\$64.17 x 2,936.61 days).
- It is assumed that there will be one admission every three years for the second degree murder of an emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter.
- The maximum cost in the tenth year, as required by Tenn. Code Ann. § 9-4-210, is based on one offender serving an additional 8.04 years. The cost for one offender every three years is \$62,814 (\$188,442 / 3).

Assumptions Relative to Cumulative Impact

- The total incarceration cost is \$1,728,324 (\$283,600 + \$1,082,840 + \$110,628 + \$188,442 + \$62,814).

Assumptions Relative to District Attorneys, Public Defenders, and Courts

- The bill will not create new crimes that would add to the caseload of the courts, district attorneys, and public defenders. Rather, it is enhancing the penalty for offenses already being prosecuted.
- It is assumed that there will not be a significant impact to the courts, district attorneys, and public defenders. Any impact can be absorbed within existing resources without an increased appropriation or reduced reversion.

**Tennessee Code Annotated, Section 9-4-210, requires that: For any law enacted after July 1, 1986, which results in a net increase in periods of imprisonment in state facilities, there shall be appropriated from recurring revenues the estimated operating cost of such law. The amount appropriated from recurring revenues shall be based upon the highest cost of the next 10 years.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

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